

Message Text

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PAGE 01 STATE 198518

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FOR GAITHER AND BLAKESLEY

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SUBJECT: EXTRADITION TREATY NEGOTIATIONS--CHILE

1. LIST OF NEGOTIATION OFFENSES HAS BEEN REVIEWED BY JUSTICE. ALTHOUGH JUSTICE REALIZES THE NECESSITY OF PROVIDING FOR RECIPROCAL OFFENSES AND SPECIFYING THE SEVERITY OF PENALTIES, JUSTICE STILL HAS FOLLOWING COMMENTS AND QUESTIONS:

A. OFFENSE 3 IN MOST RECENT TREATIES IS ENUMERATED AS EITHER UNLAWFUL OR ILLEGAL ABORTION; JUSTICE SUGGESTS LIKE LANGUAGE HERE.

B. JUSTICE ASSUMES THAT OFFENSE 8 INCLUDES KIDNAPPING, ABDUCTION, AND FALSE IMPRISONMENT; SHOULD SPECIFIC MENTION OF THESE TERMS BE INCLUDED?

UNCLASSIFIED

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PAGE 02 STATE 198518

C. JUSTICE NOTES THAT OFFENSE 11 FAILS TO DEFINE FRAUD

AND DOES NOT MENTION OBTAINING OR POSSESSING STOLEN PROPERTY AND OTHER OFFENSES WHICH APPEAR IN ALL U.S. TREATIES INCLUDING RECENT TREATIES WITH ARGENTINA AND URUGUAY. JUSTICE SPECULATES THAT GENERAL CLAUSE OF THIS TREATY MAY TREAT THESE OFFENSES; IF NOT, SPECIFIC MENTION IN ENUMERATED OFFENSES MAY BE DESIRABLE.

D. JUSTICE ASSUMES THAT OFFENSE 13 IS NEEDED BY GOC AS IT

APPEARS TO BE A REPETITION OF OFFENSES 10 AND 11 FROM US POINT OF VIEW.

E. JUSTICE SUGGESTS THAT OFFENSE 14 BE BROADENED BY STATING AS FOLLOWS: "OFFENSES AGAINST THE LAWS RELATING TO COUNTERFEITING AND FORGERY INCLUDING FALSIFICATION OF MONEY, BILLS, ... (OR, INSTEAD OF THE WORD "INCLUDING," PERHAPS THE WORD "PARTICULARLY").

F. JUSTICE SUGGESTS THAT THE WORD "COCAINE" BE MENTIONED IN OFFENSE 17 BECAUSE COCAINE IS NOT TECHNICALLY CONSIDERED BY SOME TO HAVE THE SAME DEPENDENCY EFFECT AS THE OTHER ITEMS LISTED IN OFFENSE 17.

G. CAN WE ASSUME THAT OFFENSE 18 INCLUDES OFFERING, SOLICITING, AND ACCEPTING BRIBES WITHOUT SPECIFICALLY MENTIONING THEM?

H. JUSTICE ASKS WHAT IS THE U.S. EQUIVALENT CRIME FOR OFFENSE 19. AS STATED, OFFENSE 19 APPEARS TO INCLUDE CONSPIRACY, BUT JUSTICE DESIRES CLARIFICATION.

I. JUSTICE IS UNCERTAIN AS TO THE SCOPE OF OFFENSE 22 IN TERMS OF U.S. LAW. JUSTICE POINTS OUT THAT 18 U.S.C. 1700 (DESERTION OF MAILES) AND 18 U.S.C. 1701 (OBSTRUCTION OF MAILES GENERALLY) ARE MISDEMEANORS, WHILE 18 U.S.C. 703 (DELAY OR DESTRUCTION BY POSTAL EMPLOYEES) IS A FELONY.

J. JUSTICE INQUIRES IF OFFENSE 23 INCLUDES STOCK, UNCLASSIFIED

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PAGE 03 STATE 198518

SECURITY, AND COMMODITY VIOLATIONS.

2. REGARDING PARA 2 OF REFTTEL, JUSTICE POINTS OUT THAT OFFENSE 21 IS ANALOGOUS TO THE PROPOSED GERMAN TREATY WHICH DEALS WITH FACILITATING OR PERMITTING THE ESCAPE OF A PERSON FROM CUSTODY AND WITH PRISON MUTINY. THUS, IN CONCEPT JUSTICE IS IN AGREEMENT WITH OFFENSE 21 AS PROPOSED.

3. JUSTICE ASSUMES THAT PROBLEMS UNIQUE TO U.S.G. JURISDICTION SUCH AS USE OF THE MAILS OR OTHER MEANS OF COMMUNICATION, TRANSPORTING OR TRANSPORTATION ACROSS STATE LINES, ACCESSORY TO A CRIME, CONSPIRACY, AND PENALTY IN EXCESS OF ONE YEAR, WILL BE DEALT WITH IN THE GENERAL CLAUSE AS HAS BEEN DONE IN RECENT TREATIES WITH ARGENTINA, PARAGUAY, AND URUGUAY.

4. RE PARA 4 OF REFTTEL, JUSTICE SUGGESTS THAT THE FOLLOWING LANGUAGE FOUND IN THE LIECHTENSTEIN TREATY MAY BE OF ASSISTANCE:

"WITH RESPECT TO THE ABOVE ENUMERATED CRIMES AND OFFENSE, IT IS AGREED THAT WHEN ONE OF THE CRIMES OR OFFENSES IS NOT DESIGNATED AS SUCH IN THE LAWS OF ONE OF THE STATES, NEVERTHELESS, THE EXTRADITION SHOULD TAKE PLACE WHEN SUCH CRIME OR OFFENSE INCLUDES AS AN ESSENTIAL ELEMENT AN ACT WHICH IS DESIGNATED AS PUNISHABLE BY THE LAWS OF THE STATE IN WHOSE TERRITORY THE FUGITIVE IS FOUND." KISSINGER
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